



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,756	02/08/2001	John Howard Pasch	67052	4659 10
22242	7590	06/30/2003		
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER	
			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 09/779,756	Applicant(s) Pasch et al
Examiner Lien Tran	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Apr 8, 2003

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-30 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-30 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

Art Unit: 1761

1. The 112 second paragraph rejection of claims 1-30 is hereby withdrawn.
2. The 112 first paragraph rejection of claims 1, 11 and 21 is hereby withdrawn.
3. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajracharya et al in view of Taylor (4597972) and Nauth et al (6110509) for the same reason set forth in paragraph 5 of the previous office action.
4. In the response filed April 8, 2003, applicant argues the Bajracharya et al pasta is not a ready to eat pasta and requires a short period of cooking and rehydration for consumption because the product is partially dried. This argument is not persuasive. It is not known how applicant defines "ready to eat". Does "ready to eat" mean the product can be taken out of the refrigerator and eat as it is or does "ready to eat" mean the product needs only to be cooked for a short time before consumption. If applicant means to imply the first instance, then the claimed product is not a "ready to eat" product because it requires warming before serving. If the second instance is applied, the Bajracharya et al product is "a ready to eat" product before it only requires a short period(3 minutes) of cooking before consumption. This time is a warming time because it is well known pasta is not cooked in such period of time. Furthermore, Bajracharya et al disclose the product is precooked. Applicant does not disclose what the warming time for the claimed product; thus, warming time can take as long as 3 minutes or even longer depending on how hot one wants the product to be. As to the rehydration, this is not done to cook the product; it is common to reheat pasta product in water so that the product does not dry out. Applicant discloses on page 18 lines 9-10, the pasta product is prepared by the consumer in a

Art Unit: 1761

boiling water bath. While the Bajrachary et al product is partially dried, the moisture content of the product is in the range of 40-55% which falls within the moisture content of 40-65 disclosed on page 7 for the claimed product. Thus, the Bajracharya et al product is a fully cooked product and boiling for 3 minutes is done warm the product for consumption and not for cooking.

Applicant further argues the Taylor and Nauth et al references do not teach adding nisin or nisin-containing whey to pasta-type products. While these references do not teach adding the nisin to pasta, they do teach adding nisin to low acid foods and adding nisin for the purpose of inhibiting the outgrowth of Clostridium botulinum spores in food products. Thus, it would have been obvious to one skilled in the art to add nisin to the Bajrachary et al product for the purpose taught by the prior art to make the product safer for consumption and to further enhance shelf stability; this is particular applicable because the Bajrachary et al product is a low acid food. Applicant states the statement about the nisin-containing whey is an unsupported statement and cannot provide the required motivation to combine the references. It is not clear why applicant finds the statement to be unsupported. Whey is a source of protein and it is commonly added to many different types of product. Bajrachary et al teach to add protein material to the pasta; thus, the addition of nisin-containing whey provides both antimicrobial activity and nutritional enhancement.

5. Applicant's arguments filed April 9, 2003 have been fully considered but they are not persuasive.

Art Unit: 1761

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

June 26, 2003

  
LIEN TRAN  
PRIMARY EXAMINER  
